

ITEM 15

PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Education Code Sections 38048, 39831.3 and 39831.5
Vehicle Code Section 22112

Statutes of 1992, Chapter 624
Statutes of 1994, Chapter 831
Statutes of 1996, Chapter 277
Statutes of 1997, Chapter 739

School Bus Safety I and II

EXECUTIVE SUMMARY

Background

On November 30, 1999, the Commission amended the original parameters and guidelines for School Bus Safety I to add reimbursable activities for School Bus Safety II. The claimants requested reimbursement for School Bus Safety II from the enactment date of the test claim statutes. The Department of Finance and Commission staff opposed this request and recommended reimbursement from January 1, the effective and operative date of the test claim statute. After testimony and discussion, the Commission denied claimant's request. Thus, the adopted parameters and guidelines provide for reimbursement from the effective and operative date of the test claim statute, January 1, 1998.

On December 15, 1999, the Clovis Unified School District (Clovis), claimant, requested reconsideration of these parameters and guidelines. On December 22, 2000, Commission staff advised Clovis that the only procedure that would allow the Commission to revisit this issue would be through consideration of a parameters and guidelines amendment.¹

Clovis' Proposed Amendment

On January 4, 2000, Clovis requested an amendment to the November 30, 1999 parameters and guidelines in order to revisit the period of reimbursement.

Clovis requests that Section III, Period of Reimbursement, be amended to allow reimbursement for implementation of Statutes of 1997, Chapter 739, to begin on October 7, 1997, the enactment

¹ Local agencies, school districts, or state agencies may request the Commission amend, modify, or supplement parameters and guidelines. If the Commission amends parameters and guidelines, the State Controller's Office is required to issue revised claiming instructions within 60 days after receiving revised adopted parameters and guidelines. Eligible claimants would have 120 days following the issuance date of the revised claiming instructions to file a claim. (Gov. Code, §§ 17557 and 17558; Cal. Code Regs., tit. 2, § 1183.2.)

date. Clovis contends that the limitation is not consistent with article XIII B, section 6 of the California Constitution because school districts incurred substantial costs between the enactment date and the effective date of the test claim statute. Clovis further contends that the Commission committed an error of law by basing its decision on Government Code section 17565. Clovis believes that one or more of the Commission members may have misunderstood the advice of their Chief Legal Counsel.

If approved, this amendment would allow school districts to be reimbursed for costs incurred on or after October 7, 1997 (the enactment date) in order to be in compliance by January 1, 1998 (the effective and operative date).

State Agency Comments

In its February 14, 2000 response, the Department of Finance (DOF) states that there is nothing in the test claim statutes, Education Code sections 39831.3 or 39831.5, requiring local educational agencies to comply with the requirements before its operative date, January 1, 1998.

Staff Analysis

There are three issues alleged by Clovis as the basis for this request. These issues should be addressed before the Commission considers whether to adopt or deny the proposed amendment:

Does section 6, article XIII B of the California Constitution require the Commission to approve costs incurred between the enactment date and the effective date of a test claim statute?

There is no express language in article XIII B of the California Constitution or in the Commission's statutory scheme (Gov. Code, § 17500 et seq.) that entitles local governments to subvention for costs incurred between the enactment and effective (operative) date of a statute.

However, article IV, section 8, subdivision (c)(1), of the California Constitution and the courts hold that in the absence of an urgency clause, statutes become effective on January 1 of the following year and have no force for *any* purpose until the effective date of the statute.

Accordingly, staff finds that the test claim statute had no force for any purpose, including mandate reimbursement, until the effective date of the statute, January 1, 1998.

Did the Commission base its decision to adopt the School Bus Safety II Parameters and Guidelines on Government Code section 17565?

Based on a review of the staff analysis of the parameters and guidelines and the transcript of the November 30, 1999 Commission hearing, staff finds that the Commission did not base its decision on Government Code section 17565, as alleged by Clovis. Rather, the Commission members discussed the issue of enactment versus effective dates and found that the Commission's governing law does not authorize them to allow reimbursement before the effective date of a test claim statute.

Did one or more members of the Commission misunderstand advice from their Chief Legal Counsel that section 17565 precluded them from approving reimbursement for preparation costs incurred before the operative date of the statute?

The only comments made by the Commission's Chief Legal Counsel, Pat Hart Jorgensen, during the hearing on these parameters and guidelines were comments in response to Mr. Jim Cunningham of San Diego Unified School District:

“I agree with Mr. Cunningham on his interpretation of 17565, but nonetheless I don’t see anything in the statutory scheme or in the constitution that indicates that startup costs are to be reimbursed...[T]ypically, you’re not required to follow a new statute until after the operative date...I don’t think there’s really any authority to allow for the startup costs.” (Emphasis added.)

From the closing statements made by the Commission members, it does not appear to staff that there was any misunderstanding with Ms. Hart Jorgensen’s response. However, if any Commission member believes there was a misunderstanding, the parameters and guidelines may be changed based on claimant’s proposed amendment.

Conclusion and Staff Recommendation

Based the foregoing review of Clovis’ allegations and analysis of the applicable law, staff concludes that there is no basis for adopting Clovis’ proposed amendment to the parameters and guidelines.

Staff Recommendation

Staff recommends the Commission deny Clovis’ request to amend the parameters and guidelines.

Requester

Clovis Unified School District (Clovis)

Chronology

08/20/93	San Jose Unified School District filed test claim for <i>School Bus Safety I</i>
04/26/94	Commission adopted statement of decision for <i>School Bus Safety I</i>
10/18/94	Commission adopted parameters and guidelines for <i>School Bus Safety I</i>
12/27/97	Clovis Unified School District filed test claim for <i>School Bus Safety II</i>
07/29/99	Commission adopted statement of decision for <i>School Bus Safety II</i>
11/30/99	Commission adopted amended parameters and guidelines for <i>School Bus Safety I and II</i>
12/00/99	Clovis Unified School District requests reconsideration of the amended parameters and guidelines for <i>School Bus Safety I and II</i> .
12/22/99	Commission staff advises Clovis that there is no procedure for reconsideration of the parameters and guidelines.
01/04/00	Clovis Unified School District filed request to amend parameters and guidelines.
02/14/00	Department of Finance files comments on proposed amendment.

Clovis' Proposed Amendments

On January 4, 2000, Clovis Unified School District (Clovis) submitted a request to amend the parameters and guidelines. Clovis requests that Section III, Period of Reimbursement, be amended to allow reimbursement for costs incurred on or after October 7, 1997, to implement Statutes of 1997, Chapter 739.

Clovis contends that the Commission's adopted parameters and guidelines which allow for reimbursement beginning on or after January 1, 1998, the operative date of the statute, is not consistent with Article XIII B, section 6 of the California Constitution. According to Clovis, section 6 requires the state to reimburse local governments, including school districts, for the costs of new programs or higher levels of service. Clovis notes that Clovis, San Diego Unified School District, and the Education Mandated Cost Network testified at the November 30, 1999 Commission hearing that school districts incurred substantial costs between October 7, 1997 and January 1, 1998, to assure they were in compliance with the test claim legislation by the operative date. Clovis explained that in order to be in compliance, school districts had to prepare their initial transportation safety plan (Section IV, Component F), conduct training, and provide information to the public (Section IV, Component H) well before the operative date.

Clovis submits that the Commission committed an error of law by basing its decision on Government Code section 17565 and argues that this section does not apply because 1) school districts did not incur these costs at their option, and 2) these costs were incurred after the state mandated the new program. Clovis alleges that these activities occurred only because of Chapter 739 and that the costs were incurred after this statute became chaptered.

Clovis contends that one or more of the Commission members may have understood the Commission's Chief Legal Counsel to have advised them that section 17565 precluded them

from approving reimbursement for the preparation costs incurred before the operative date of the statute. Clovis submits that the Commission's Counsel actually advised the Commission that its governing law does not preclude them from finding these costs are reimbursable, nor does it authorize them to find the costs reimbursable. Therefore, Clovis reasons that the Commission has the power to approve payment of these costs, and, under Article XIII B, section 6, has the duty to do so.

State Agency Comments

In its February 14, 2000 response, the Department of Finance (DOF) concurred with the existing parameters and guidelines. DOF opposed Clovis' requested amendment because DOF found nothing in the test claim statutes, Education Code sections 39831.3 or 39831.5, requiring local educational agencies to comply with the requirements before the operative date, January 1, 1998.

STAFF ANALYSIS

Issue: SHOULD THE COMMISSION AMEND THE PARAMETERS AND GUIDELINES TO CHANGE THE PERIOD OF REIMBURSEMENT FOR STATUTES OF 1997, CHAPTER 739, FROM THE EFFECTIVE-OPERATIVE DATE, JANUARY 1, 1998, TO THE ENACTMENT DATE, OCTOBER 7, 1997?

The Commission adopted the original parameters and guidelines for *School Bus Safety I* on October 18, 1994. At its November 30, 1999 hearing, the Commission amended those parameters and guidelines to consolidate activities determined by the Commission to be eligible for reimbursement in the statements of decision for *School Bus Safety I* and *School Bus Safety II*. After much discussion, the Commission determined that the period of reimbursement for costs incurred for Statutes of 1997, Chapter 739, begins on January 1, 1998, the operative date of the statute.

At the hearing, Clovis disagreed with the Commission's finding regarding the reimbursement period. Consequently, on January 4, 2000, Clovis submitted a request to amend the parameters and guidelines. In its submittal, Clovis maintains that districts should be reimbursed for costs incurred on or after October 7, 1997, the enactment date of the statute, in order to be in compliance by the January 1 operative date. Clovis contends that the Commission committed an error of law by basing its decision on Government Code section 17565. Clovis further alleged that one or more of the Commission members may have understood the Commission's Chief Legal Counsel to have advised them that section 17565 precluded them from approving reimbursement for the preparation costs incurred before the operative date of the statute.

There are three issues alleged by Clovis as the basis for this request. These issues should be addressed before the Commission considers whether to adopt or deny the proposed amendment:

Does section 6, article XIII B of the California Constitution require the Commission to approve costs incurred between the enactment date and the effective date of a test claim statute?

Clovis contends that reimbursement for implementation of the test claim statutes beginning on October 7, 1997, the enactment date, is consistent with article XIII B, section 6, of the Constitution, which provides, as follows:

“Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected;
- (b) Legislation defining a new crime or changing an existing definition of a crime; or
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

In 1984, the Legislature enacted Government Code section 17500 and following to establish the Commission on State Mandates and to implement section 6, article XIII B of the California Constitution. Staff notes that there is no express language in article XIII B of the California Constitution or in the Commission’s statutory scheme (Gov. Code, § 17500 et seq.) that entitles local governments to subvention for costs incurred between the enactment and effective (operative) date of a statute.

However, the California Constitution provides that in the absence of an urgency clause, a statute enacted at a regular session of the Legislature becomes effective on January 1 of the following year (Cal. Const., art. IV, § 8, subd. (c)(1).

Courts interpreting this constitutional provision have explained that in the usual situation, the “effective” and “operative” dates are one and the same, *and a statute has no force and effect until such effective-operative date*. In some instances, the Legislature may provide for different effective and operative dates. The operative date is the date upon which the directives of the statute may actually be implemented. The effective date, then, is considered that date upon which the statute came into being as an existing law. An enactment is a law on its effective date only in the sense that it cannot be changed except by legislative process; the rights of individuals under its provisions are not substantially affected until the provision operates as law. The Legislature may establish an operative date later than the effective date, since the power to enact laws includes the power to fix a future date on which the act will become operative.²

The courts have also explained that a statute has no force for *any* purpose, and is void, until the effective-operative date.

“Until the time it is to take effect, a statute has *no force for any purpose*, though it has been duly passed by the legislature and approved by the Governor. It speaks only from the date it takes effect. Acts done under it before that time are *void*.” (Citations omitted, emphasis added.)³

In the present case, it is undisputed that the test claim legislation was enacted on October 7, 1997 and was effective and operative on January 1, 1998. Staff concurs with the Department of Finance that there is nothing in the test claim statute that indicates a legislative intent for this statute to be effective and operative on October 7, 1997. Rather, January 1, 1998 is the date upon which the statute came into being as an existing law.

² See Exhibit I, *People v. Camba* (1996) 50 Cal.App.4th 857. (Bates page 91.)

³ 58 Cal Jur 3d, section 18, page 330.

Accordingly, based on these holdings, staff finds that the test claim statute had no force for any purpose, including mandate reimbursement, until the effective date, January 1, 1998. Therefore, staff concludes that section 6, article XIII B of the California Constitution does not require reimbursement for the test claim statute prior to the effective date.

Did the Commission base its decision to adopt the School Bus Safety II Parameters and Guidelines on Government Code section 17565?

Clovis contends that the Commission committed an error of law by basing its decision on Government Code section 17565. Government Code section 17565 states the following:

“If a local agency or school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate.”

There is no mention of Government Code section 17565 in the Staff Analysis prepared for the November 30, 1999 hearing.⁴ In fact, Mr. Jim Cunningham of San Diego Unified School District testified that staff changed the period of reimbursement in the proposed parameters and guidelines from October 7, 1997, to January 1, 1998, the operative date. He added that “Staff didn’t provide any reason in the analysis for this change, but we believe that the change is based upon an interpretation of Government Code section 17565. And if so, then we think that they’re misinterpreting the section and applying it to a situation, a set of facts, that were not intended by that section.” Mr. Cunningham proceeded to explain that Government Code section 17565 provides that, if a school district incurs costs at its option that are subsequently mandated, reimbursement begins on the operative date of the mandate.⁵ During his testimony, Mr. Cunningham emphasized that since the activities occurred subsequent to the enactment of the test claim legislation, and not before, that section 17565 does not apply.

In response to a question from Member Gomes concerning the reason why staff changed the reimbursement period proposed by the claimant, Staff Counsel David Scribner stated “it became law on January 1, 1998, and that’s why we made the change, that and 17565 as well.”⁶ He clarified that the claimants were not required until January 1 to operate under the requirements imposed by the test claim statute.⁷

Contrary to Clovis’ contention, the Commission did not find that Government Code section 17565 precluded them from authorizing reimbursement before the operative date. Rather, the members discussed the issue of enactment versus effective dates. Member Steinmeier stated:

“I guess you could make a case—Mr. Cunningham just did that—that you have to do things in order to be ready for an operative date. There are real costs. I know that for a fact since I’m on a school board. At the same time, I don’t think [the Commission’s] statute is absolutely crystal clear that these costs are now attached to the mandate process. And, although I appreciate Mr. Cunningham’s

⁴ See Exhibit A, Bates page 21.

⁵ Exhibit B, November 30, 1999 Commission Hearing Transcript at Bates page 33.

⁶ *Id.* at Bates page 37.

⁷ *Id.* at Bates pages 37 and 39.

arguments—I know they are true—I just think that *[the Commission’s] law is not clear enough to give [the Commission] that authorization*, as much as I’d like to do that. *I think this is a case for a clarification of the law and it should be the subject of a change.*”⁸ (Emphasis added.)

Member Sherwood agreed with Member Steinmeier. He noted that, “It would be nice if [the Commission] had some statute that allowed that type of analysis and decision-making.”⁹ Member Sherwood added that, in prior decisions on this issue, the Commission has felt that it did not have the leeway to authorize reimbursement for preparation costs incurred prior to the operative date.

Mr. Cunningham reasserted his position that the Commission was applying section 17565 to a situation that it was never intended to apply. He stated:

“I think it’s [17565] being misapplied to this startup date procedure. And again, I don’t think that this code section precludes you from reimbursing us for our costs that are the natural and definite result of this statute ...I think that 17565 is not the bar that you think it may be, and I think you do have the ability to go back to the constitution and look at the purpose of this whole reimbursement provision and make the decision that we’re entitled to a reimbursement for our costs from the date that the law was signed.”¹⁰

Chief Legal Counsel Pat Hart Jorgensen stated:

“I agree with Mr. Cunningham on his interpretation of 17565, but nonetheless I don’t see anything in the statutory scheme or in the constitution that indicates that startup costs are to be reimbursed...[T]ypically, you’re not required to follow a new statute until after the operative date...I don’t think there’s really any authority to allow for the startup costs.”¹¹ (Emphasis added.)

Chairperson Porini added, “I think we all understand that the issue—and it was a tough issue—for school districts to comply, but nonetheless the law didn’t go into effect until January 1st.¹²

Before moving staff’s recommendation, Member Foulkes noted that he agreed with the prior comments and with staff’s comments. He noted that, “we all stated the understanding of the issue, but I feel that I agree with staff that *the law doesn’t give [the Commission] that authority...*”¹³ (Emphasis added.)

The five members voting for the November 30, 1999 staff recommendation (which included the January 1, 1998 operative date) agreed that the Commission’s governing law does not authorize them to allow such reimbursement. The Commission adopted staff’s recommendation on a vote of 5-1.

⁸ *Id.* at Bates page 38.

⁹ *Id.* at Bates pages 39-40.

¹⁰ *Id.* at Bates pages 40-41.

¹¹ *Ibid.*

¹² *Id.* at Bates page 42.

¹³ *Ibid.*

Based on the foregoing review of the staff analysis and the transcript of the November 30, 1999 hearing on the School Bus Safety I-II Parameters and Guidelines, staff finds that the Commission did not base its decision on Government Code section 17565, as alleged by Clovis. Therefore, staff concludes that Clovis' allegation is without merit.

Did one or more members of the Commission misunderstand advice from their Chief Legal Counsel that section 17565 precluded them from approving reimbursement for preparation costs incurred before the operative date of the statute, as alleged by claimant?

Clovis believes that one or more of the Commission members may have misunderstood advice from their Chief Counsel.

As excerpted above, Chief Legal Counsel Pat Hart Jorgensen stated in response to Mr. Cunningham:

*"I agree with Mr. Cunningham on his interpretation of 17565, but nonetheless I don't see anything in the statutory scheme or in the constitution that indicates that startup costs are to be reimbursed...[T]ypically, you're not required to follow a new statute until after the operative date...I don't think there's really any authority to allow for the startup costs."*¹⁴ (Emphasis added.)

These are the only comments made by the Chief Counsel during the hearing on the parameters and guidelines.

From the closing comments made by the Commission members, it does not appear to staff that there was any misunderstanding with Ms. Hart Jorgensen's response. However, if any Commission member believes there was a misunderstanding, the parameters and guidelines may be changed based on Clovis' proposed amendment.

Conclusion and Staff Recommendation

Based the foregoing review of Clovis' allegations and analysis of the applicable law, staff concludes that there is no basis for adopting Clovis' proposed amendment to the parameters and guidelines.

Staff Recommendation

Staff recommends the Commission deny Clovis' request to amend the parameters and guidelines.

[Back to Current Hearing](#)

¹⁴ *Id.* at Bates page 41.